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FILED
JUN 27 1940
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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 186

FRANCISCO DE LA TORRE,
Petitioner,

v.

THE NATIONAL CITY BANK OF NEW YORK,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT AND BRIEF IN SUPPORT THEREOF

June 20, 1940.

LUIS LLORENS TORRES,
LUIS MUÑOZ MORALES, and
HENRY G. MOLINA,
Counsel for Petitioner.

Appeal Printing Co., Inc., 130 Cedar St., New York

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PETITION FOR WRIT OF CERTIORARI

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner, Francisco de la Torre, respectfully shows:

This is a petition for a writ of certiorari to the United States Circuit Court of Appeals for the First Circuit to review a judgment entered on March 29, 1940, affirming a judgment of the Supreme Court of Puerto Rico which dismissed the original petition of this petitioner addressed to the District Court of San Juan for an order to set aside the attachment that had been levied at the instance of the plaintiff-appellee, The National City Bank of New York, on real property, two houses and a mortgage credit, belonging to the conjugal partnership composed of the appellant and his wife, Carmen Fernández Saldaña, to secure the effectiveness of the judgment sought by said bank against the appellant and his cousin, Mercedes de la Torre, and her husband, Arturo O'Neill for the amount of a cer-

tain note, $10,398.38, with interest thereon at 9% per annum from October 12, 1929, together with the costs of the suit.

The mandate of the Circuit Court of Appeals has been recalled to that court pending action on this petition.

I

Statement of the matter involved

The facts are succinctly stated in the opinion of the Supreme Court (R. 6) as follows:

> Mercedes de la Torre Berríos applied to the American Colonial Bank of Porto Rico for a loan for $10,398.38. The bank demanded certain collateral securities in addition to the mortgage offered by the applicant. As a substitute for the collateral securities Francisco de la Torre Carrido, petitioner, agreed to become also responsible for the amount of the loan, with the stipulated interest thereon plus costs and attorney's fees in case of judicial recovery. This accommodation on the part of de la Torre was given without compensation or without any valuable consideration or promise of gain. As agreed upon, Mercedes de la Torre and Francisco de la Torre subscribed, on May 20, 1929, a promissory note, a mortgage to secure the same being executed upon property belonging to the former and subscribed also by the latter as maker thereof, for the purposes previously stated. Mercedes de la Torre received the full amount of the loan, and at the same time or immediately thereafter she delivered the note to the creditor bank in payment of certain obligations from her to the already matured.
>
> It is immaterial to specify whether Francisco de la Torre subscribed the promissory note and the mortgage as a surety *in solidum* or as principal

debtor. It will be sufficient to state, for the purpose of this opinion, that the loan was not made either for his benefit separately or for that of the conjugal partnership existing since 1906 between himself and his wife, it being necessary to state further that the latter did not have any knowledge of, nor did she ratify, the deal made by her husband. It is a fact, however, admitted by De la Torre, that he assumed the obligation to pay the loan in question.

Some time after the carrying out of this deal, The National City Bank of New York took over all the assets and liabilities of The American Colonial Bank of Porto Rico and in this way the aforesaid credit became the property of the plaintiff bank.

Upon the failure to pay the loan at maturity the plaintiff took the proper action for its collection, and to secure the judgment to be rendered and irrespective of the property mortgaged it attached property belonging to the conjugal partnership between De la Torre and his wife, Carmen Fernández Saldaña, notwithstanding the allegation of this defendant that he owns separate property liable to be attached for that purpose.

In opposition to the above steps taken by the plaintiff, De la Torre, in a separate record and as an incident of the attachment, filed a motion in the District Court of San Juan, in which after reciting the facts above set out, not controverted by the plaintiff, prayed that after hearing the parties the nullity and dissolution of the attachment be decreed.

The ground for his motion is that, as no obligation or debt of the conjugal partnership is involved, no property belonging to said partnership should be attached for the payment of the obligation sued on.

After a hearing the district court made an order denying the motion of De la Torre, from which the present appeal was taken.

II

Reasons relied upon for the allowance of the writ

The grounds upon which petitioner prays that this matter should be reviewed are:

(1) That the Circuit Court of Appeals has interpreted the decisions of this honorable Court in *Bonet* v. *The Texas Co.*, 84 L. Ed. 292, and *Bonet* v. *Yabucoa Sugar Co.*, 306 U. S. 505, 83 L. Ed. 946, as virtually derogating or repealing the Act of Congress which provides (28 USCA, Sec. 225):

> Sec. 225. (Judicial Code, section 128, amended.) Appellate Jurisdiction.—(a) *Review of final decisions.* The circuit courts of appeal shall have appellate jurisdiction to review by appeal final decisions— * * * Fourth. In the Supreme Courts of the Territory of Hawaii and of Puerto Rico, in all cases, civil or criminal, wherein the Constitution or a statute or treaty of the United States or any authority exercised thereunder is involved; in all other civil cases wherein the value in controversy, exclusive of interests and costs, exceeds $5,000, and in all habeas corpus proceedings;

that this Honorable Court, with all due and humble respect, has no power or right under the Constitution to repeal an Act of the Congress and, in this instance, to deprive petitioner of his clear and manifest right to appeal from a judgment of the Supreme Court of Puerto Rico in a case involving more than $5,000, and to have that appeal sustained and the judgment of the Supreme Court of Puerto Rico reversed if the Honorable Circuit Court of Appeals in the careful and well-considered opinion or opinions of its three judges believe that the judgment appealed from is erroneous.

(2) That the Supreme Court of Puerto Rico committed *manifest* error in holding that in accordance with the laws of Puerto Rico community property can be attached and sold to satisfy a gratuitous obligation incurred by the husband (accommodation endorsement of a note) without the consent of the wife and without the community deriving any benefit whatsoever from the transaction.

There is presented herewith as part of this petition a certified transcript of the record before the Circuit Court of Appeals but there is no issue as to the facts so that record is useful only for the opinion of the Puerto Rican Supreme Court which appears on pages 6 to 16 thereof.

Wherefore petitioner prays that a writ of certiorari be issued out of and under the seal of this Court, directed to the United States Circuit Court of Appeals for the First Circuit commanding that Court to certify and send to this Court, on a day certain to be therein designated, a full and complete transcript of the record and all proceedings in said Circuit Court of Appeals in this cause, to the end that said cause may be reviewed and determined by this Court as provided by law, and that the judgment of said Circuit Court of Appeals in this cause may be reversed by this Court, and the mandate thereof recalled and revised, and that petitioner may have such other or further relief or remedy in the premises as to this Court may seem appropriate.

And petitioner will ever pray.

Luis Llorens Torres,
Luis Muñoz Morales, and
Henry G. Molina,
Solicitors for Petitioner.

I hereby certify that I have examined the foregoing petition, that in my opinion it is well founded and entitled to favorable consideration of the Court, and that it is not filed for the purpose of delay.

June 20, 1940.

HENRY G. MOLINA,
Counsel.